**Comments on the**

**Draft General Comment No. 25**

**Children’s rights in relation to the digital environment**

By:

James Michael A. Uaminal

Juris Doctor, University of the Philippines College of Law (2020)

Bachelor of Arts major in Political Science, University of the Philippines Cebu (2014)

 The Committee on the Rights of the Child (CRC) has invited stakeholders to comments on its draft general comment on children’s rights in relation to the digital environment. The author’s comments are enumerated and explained below, with reference to the specific sections or parts of the Draft General Comment.

*The paramount consideration of maintaining the confidentiality of the identity and other relevant information of child victims (in relation to Part K. Remedies)*

Any form of remedy or procedure for addressing violations of children’s rights and abuses of children must ensure that the confidentiality of a child victim’s identity and other relevant personal information is maintained throughout the entire administrative, investigative and judicial process. The same should apply in the violation of their rights in the context of the digital environment. For example, online websites and platforms that contain complaint and grievance mechanisms must guarantee complete confidentiality of information on child victims, including their usernames, email addresses, and other potentially identifying data. When these entities relay information to law enforcement authorities and other government agencies concerning complaints and reports of child victims, prior and informed consent for the transfer of information should be obtained. However, the transfer of such information shall not discharge them of their duty to maintain its confidentiality.

This confidentiality shall also be observed in all court records, notices and other processes at all levels (trial courts, appellate courts and courts of final resort). Courts must be empowered by law or by procedural rules to impose fines and penalties (e.g. contempt declarations, monetary fines, etc.) on party-litigants, counsels, or even court personnel who breach this duty to observe confidentiality, without prejudice to civil or criminal liability for violation of data privacy laws.

*Updating existing legislation to accommodate “electronic violence” and other violations of children’s rights (in relation to para. 24 of the General Comment)*

 The draft General Comment recognizes the need for States to “review and update national legislation to ensure the digital environment is compatible with the rights in the Convention and its Optional Protocols” (para. 24). Pending measures in the Philippine Legislature aims to achieve this by updating and amending the Anti-Violence against Women and Their Children (Anti-VAWC) Act of 2004 (Republic Act No. 9262). House Bill No. 5869 envisions the expansion of the Anti-VAWC law into electronic violence or ICT-related violence which is defined as “any act or omission involving the use or exploitation of data or any form of information and communications technology which causes or is likely to cause mental, emotional, or psychological distress or suffering to the woman and her children.”[[1]](#footnote-1) Some of the instances of electronic violence mentioned in this bill are:

1. Unauthorized recording, reproduction, distribution, use, sharing or uploading of any photograph, video, or other forms of electronic and/or artistic presentation:
	1. showing or depicting in any form or manner the genitalia;
	2. exhibiting any sexually-related verbal or nonverbal expression or gesture which may be construed as lewd, indecent, or obscene; and
	3. depicting any purported violent or errant behavior or the use of intoxicating or prohibited substances or drugs;
2. Unauthorized use of a photograph, video, voice recording, name or any mark, reference or character identifiable with a woman and her children and suggestive of a wrongdoing, conduct or attribute that tends to besmirch the reputation of the woman and her children;
3. Harassment, intimidation, coercion, etc. through text messaging or other cyber, electronic, or multimedia technology;
4. Stalking, including hacking of personal social media accounts; and
5. Fabrication of fake information and creation of fake social media accounts with ill intent and malice, to sow intrigue or inflict harm.[[2]](#footnote-2)

The same bill also provides for remedial measures for the protection of victims of electronic violence. A protection order may be issued for the purpose of “immediate blocking, blacklisting, removal or shutdown of any upload, program or application that causes or tends to cause violence against a woman and her children”[[3]](#footnote-3). Internet service providers who fail to cooperate with law enforcement agencies for the implementation of the protection order will be made liable for the crime of obstruction of justice.[[4]](#footnote-4)

In a similar measure pending in the upper chamber (Senate) of the Philippine Legislature, an Address Confidentiality Program is proposed to “ensure the protection and safety of E-VAWC (Electronic Violence Against Women and Their Children) victims by providing them with substitute address.”[[5]](#footnote-5) This substitute address will guarantee the non-disclosure of the actual addresses of child victims, especially to their assailants or abusers who may exploit the accessibility of public records in order to locate their former victims.

 Notwithstanding these legislative proposals, existing Philippine laws already provide protection for children in the context of the digital environment. One such legislation is the recently-enacted Safe Spaces Act[[6]](#footnote-6) which penalizes, among others, gender-based online sexual harassment[[7]](#footnote-7). Another relevant law is the Cybercrime Prevention Act of 2012 which penalizes several kinds of cybercrime offenses, some of which are specifically relevant to children’s rights: (1) child pornography committed through a computer system; (2) computer-related identity theft, fraud and forgery; and (3) cyber-libel.[[8]](#footnote-8) Other relevant existing laws are the Anti-Child Pornography Act of 2009[[9]](#footnote-9) and the Special Protection of Children Against Abuse, Exploitation and Discrimination Act[[10]](#footnote-10). Although the terms used in these laws are broad enough to cover abuses and violations committed in the digital environment, amendments may be introduced in the future to provide clear and unequivocal language as to their applicability even to the digital realm, and to all present and future forms of digital communication.

*The use of the digital environment in support of the right to education (Part XI.A, paras. 107-114)*

 The General Comment noted that the digital environment can be used to “enhance children’s access to quality education” (para. 107), especially for “children not physically present in school or living in remote areas or in disadvantage or vulnerable situations, digital educational technologies can enable distance or mobile learning programmes” (para. 110). The use of these digital education technologies is all the more made crucial with the current Coronavirus Disease (COVID-19) pandemic as schools are forced to close down and conduct classes remotely through the Internet. In the Philippines, no physical classes were allowed to be conducted for the school year 2020-2021 until government prohibitions regarding face-to-face classes are lifted or relaxed[[11]](#footnote-11). According to the Philippine Department of Education Basic Education Learning Continuity Plan, the following are the learning modalities that may be adopted: modular distance learning (using self-learning modules), online distance learning, and TV/radio-based instruction[[12]](#footnote-12). The learning resources under these learning modalities are, among others, textbooks distributed to schools, self-learning modules in print and digital format, interactive e-books, video-taped lessons and radio scripts for radio-based instructions. However, the printing of self-learning modules and textbooks can be considered too costly and not environment-friendly considering the volume of paper needed for this. Also, there is the added logistical hurdle that distribution should be done in a sanitized and clean manner to ensure that these materials would not be vectors of virus transmission. Digital technologies can address this problem through the scanning of textbooks and their conversion into e-books and other digital formats. One pending legislation in the Philippine Senate aims to institutionalize a mechanism for the scanning and conversion of print textbooks and their distribution electronically to all public school students[[13]](#footnote-13). This simple solution of electronic scanning and conversion of learning materials could go a long way in terms of casting a wider net of accessibility to quality education especially for an educational system plagued with a scarcity of textbooks.

*Children in situations of armed conflict and the digital environment (in relations to paras. 125-126)*

The first principle stated in the General Comment is the right to non-discrimination (paras. 10-12) which entails ensuring “all children, including children of lower income families and children living in rural and remote areas, have equal and effective access to the digital environment in ways that are meaningful for them” (para. 10). One of the vulnerable groups that the Committee may consider is the sector of children in situations of armed conflict. This group is manifestly disadvantaged in terms of access to the digital environment because of disruptions in public services like electricity and internet connectivity in places of armed conflict. Moreover, they may even be subjected to hate speech, biased reporting, misrepresentation, and other forms of discriminatory treatment. Recently, the Philippines passed Republic Act No. 11188 or the Special Protection of Children in Situations of Armed Conflict Act. This law was enacted in fulfillment of the protections guaranteed under the UN Convention on the Rights of the Child, the Optional Protocol on the involvement of children in armed conflict and all other human rights treaties.[[14]](#footnote-14) This law recognizes the right of children in situations of armed conflict to privacy, confidentiality and non-discrimination.[[15]](#footnote-15) It also penalizes the act of false reporting of a child in custody[[16]](#footnote-16) and false branding of children or labelling children as children involved in armed conflict[[17]](#footnote-17). It is submitted that laws like R.A. No. 11188 which provide for these rights and penal sanctions should equally apply to acts committed in the digital environment (e.g. unauthorized disclosure of names, pictures, and other personal information of children in situations of armed conflict, false branding of children in news reports, public posts in social media, etc.).

 On the other hand, the digital environment can be harnessed as an effective platform for the empowerment and capacity-building of these children as stated in para. 125 of the General Comment. As an example, schools and learning institutions in places of on-going armed conflict and hostilities are most likely closed or inaccessible, if not destroyed. The digital environment through online classes, self-learning modules distributed through the internet, video recording of lessons, and similar learning delivery modalities, can serve as “temporary schools” for these children and prevent them from being deprived of education for months or even years.

*Child-friendly versions or “explainers” of laws relating to children’s rights (para. 52)*

 To be able to meaningfully provide access to information for children, the General Comment could include in paragraph 52 the duty of States to formulate and disseminate child-friendly versions or “explainers” of laws, rules and regulations relating to children’s rights, similar to child-friendly versions of the United Nations Convention on the Rights of the Child[[18]](#footnote-18). The availability of these kinds of materials, especially in social media and other digital platforms, will ensure that the children themselves understood their rights under the law and are able and equipped to hold accountable adult duty-bearers.

1. Expanded Anti-Violence Against Women and Their Children (E-VAWC) Act, H.B. No. 5869, 18th Cong. § 2 (2019) available at http://congress.gov.ph/legisdocs/third\_18/HBT5869.pdf [↑](#footnote-ref-1)
2. Id. [↑](#footnote-ref-2)
3. Id. at § 6 [↑](#footnote-ref-3)
4. Id. [↑](#footnote-ref-4)
5. Expanded Anti-Violence Against Women and Their Children (E-VAWC) Act, S. No. 1632, 18th Cong. § 8 (2020) available at http://legacy.senate.gov.ph/lisdata/3306629908!.pdf [↑](#footnote-ref-5)
6. Safe Spaces Act, Republic Act No. 11313 § 12 (2018) available at https://www.officialgazette.gov.ph/downloads/2019/04apr/20190417-RA-11313-RRD.pdf [↑](#footnote-ref-6)
7. The term includes “acts that use information and communications technology in terrorizing and intimidating victims through physical, psychological, and emotional threats, unwanted sexual misogynistic, transphobic, homophobic and sexist remarks and comments online whether publicly or through direct and private messages, invasion of victim’s privacy through cyberstalking and incessant messaging, uploading and sharing without the consent of the victim, any form of media that contains photos, voice, or video with sexual content, any unauthorized recording and sharing of any of the victim’s photos, videos, or any information online, impersonating identities of victims online or posting lies about victims to harm their reputation, or filing, false abuse reports to online platforms to silence victims.” [↑](#footnote-ref-7)
8. Cybercrime Prevention Act of 2012, Republic Act No. 10175 § 4 (2012) available at https://www.officialgazette.gov.ph/2012/09/12/republic-act-no-10175/ [↑](#footnote-ref-8)
9. Anti-Child Pornography Act of 2009, Republic Act No. 9775 (2009) available at https://www.officialgazette.gov.ph/2009/11/17/republic-act-no-9775-s-2009/ [↑](#footnote-ref-9)
10. Special Protection of Children Against Abuse, Exploitation and Discrimination Act, Republic Act No. 7610 (1992) available at https://www.officialgazette.gov.ph/1992/06/17/republic-act-no-7610/ [↑](#footnote-ref-10)
11. Basic Education Learning Continuity Plan for School Year 2020-2021 in light of the COVID-19 Public Health Emergency, Department of Education Order No. 12, series of 2020, § 14 available at https://www.deped.gov.ph/wp-content/uploads/2020/06/DO\_s2020\_012.pdf [↑](#footnote-ref-11)
12. Id. at page 31 [↑](#footnote-ref-12)
13. Amending the Book Publishing Industry Development Act, S. No. 1881 § 14 (2020) [↑](#footnote-ref-13)
14. Special Protection of Children in Situations of Armed Conflict Act, Republic Act No. 11188 § 2(a) (2018) available at https://www.officialgazette.gov.ph/2019/01/10/republic-act-no-11188/ [↑](#footnote-ref-14)
15. Id. § 7(n) and (o) [↑](#footnote-ref-15)
16. Id. § 9(d)(4) [↑](#footnote-ref-16)
17. Id. § 9(d)(5) [↑](#footnote-ref-17)
18. Examples of this are available at https://www.crcasia.org/uncrc-child-friendly-versions/ [↑](#footnote-ref-18)